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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN MATEO

SIX4THREE, LLC, a Delaware limited liability
company,

Plaintiff,

v.

FACEBOOK, INC., a Delaware corporation;
MARK ZUCKERBERG, an individual;
CHRISTOPHER COX, an individual;
JAVIER OLIVAN, an individual;
SAMUEL LESSIN, an individual;
MICHAEL VERNAL, an individual;
ILYA SUKHAR, an individual; and
DOES 1-50, inclusive,

Defendants.

Case No. CIV 533328

Assigned for all purposes to Hon. V. Raymond
Swope, Dept. 23

**DEFENDANT FACEBOOK, INC.'S
OPPOSITION TO BIRNBAUM & GODKIN,
LLP'S EX PARTE APPLICATION TO STAY
DISCOVERY**

Date: May 10, 2019
Time: 9:00 a.m.
Dept: 23 (Complex Civil Litigation)
Judge: Honorable V. Raymond Swope

FILING DATE: April 10, 2015
TRIAL DATE: April 25, 2019

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Memorandum of Points and Authorities in Oppc
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FILED
SAN MATEO COUNTY

MAY 08 2019

Clerk of the Superior Court

By

~~DEPUTY CLERK~~

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1 **I. INTRODUCTION**

2 Birnbaum & Godkin, LLP (“Birnbaum & Godkin”) already delayed discovery into its actions by
3 demanding a stay while it sought to withdraw as Plaintiff Six4Three, LLC’s (“Six4Three”) counsel on
4 the basis that it had an unwaivable conflict of interest with its client. Declaration of Catherine Y. Kim
5 submitted herewith (“Kim Decl.”) Ex. 1, Petition for Peremptory Writ at 19-21, 29-30 (Apr. 10,
6 2019). According to Birnbaum & Godkin, the allegedly unwaivable conflict was so severe that it
7 prevented Birnbaum & Godkin from acting as Six4Three’s counsel. *Id.*; Kim Decl. Ex. 2, Hr’g Tr. at
8 14:3-16:12, 32:24-33:24 (Mar. 13, 2019); *id.* Ex. 3, Mem. in Supp. of Birnbaum & Godkin’s Mot. to be
9 Relieved as Counsel at 2-3 (Jan. 8, 2019); *id.* Ex. 4, Ex Parte Appl. to Stay Disc. at 6-7 (Mar. 27,
10 2019). Now, not one week after the Court accepted Birnbaum & Godkin’s argument that a conflict exists
11 that precludes it from representing Six4Three and granted the motion to withdraw, Birnbaum & Godkin
12 is before the Court effectively arguing on Six4Three’s behalf for yet another stay in hopes of further
13 delaying any inquiry into its (and Six4Three’s) violations of this Court’s Orders.

14 ***So why would a law firm that was permitted to withdraw due to a supposedly unwaivable***
15 ***conflict and that claims the relationship with its client has broken down completely continue to***
16 ***represent its former client’s interests?*** Because the withdrawal—and virtually every other action taken
17 by Birnbaum & Godkin, Gross & Klein LLP (“Gross & Klein”), Mr. Kramer, Mr. Scaramellino, and
18 Six4Three since last November—have been aimed at derailing this Court’s investigation into the crime
19 or fraud committed by Mr. Kramer, Mr. Scaramellino, Mr. Godkin, and Mr. Gross, and any relief for
20 Facebook. And so far, those efforts have been largely successful—it has now been almost six months
21 since multiple violations of this Court’s orders first came to light, and aside from a limited production of
22 documents and numerous untested, self-serving statements from the individuals involved in the crime or
23 fraud, the Court and Facebook are no closer to figuring out who has Facebook’s confidential and highly
24 confidential information and how they got it. The instant ex parte request is just more of the same.
25 Having successfully withdrawn from representing Six4Three, Birnbaum & Godkin now seek to use the
26 unrepresented status of their former client (with whom they were found to have engaged in the crime or
27 fraud) to delay things by months more. But Mr. Godkin and his firm cannot have it both ways: either he
28 is counsel for Six4Three, or he is not. Having withdrawn, he has given up his right to request relief on

1 Six4Three's behalf. And more fundamentally, neither Mr. Godkin and his firm, nor Mr. Kramer, nor Mr.
2 Scaramellino should be permitted to use the unrepresented status of the Six4Three entity to block
3 discovery from the various relevant individuals, *every one of whom is represented by counsel*. It is long
4 past time for discovery into their multiple abuses to proceed.

5 **II. ARGUMENT**

6 **A. Birnbaum & Godkin Cannot Argue on Six4Three's Behalf.**

7 Birnbaum & Godkin does not represent Six4Three. It moved to withdraw specifically on the
8 basis that Facebook's "allegations against Plaintiff and Plaintiff's counsel, coupled with the fact that
9 Defendant has directed discovery requests directly at Plaintiff's counsel, separate and apart from the
10 client, constitute a prima facie case of an un-waivable conflict between attorney and client." Kim. Decl.
11 Ex. 3, Mem. in Supp. of Mot. to be Relieved as Counsel at 3 (Jan. 8, 2019). And yet, Birnbaum &
12 Godkin is now representing Six4Three's interests. In the ex parte application, Birnbaum & Godkin
13 makes multiple statements on Six4Three's behalf and requests a stay of discovery and reconsideration of
14 the Court's March 15, 2019 Order re: Defendant Facebook Inc.'s Motion to Open Discovery and to
15 Compel ("March 15 Order") on the basis of the harm that Six4Three would suffer if discovery goes
16 forward. For example, Birnbaum & Godkin claims:

- 17 • "unless the Court grants this ex parte application, Plaintiff SIX4THREE, a corporation that
18 has been without counsel since April 30, 2019, would be forced to participate in such
19 discovery proceedings *in propria persona*." Ex Parte Appl. to Stay Disc. ("Appl.") at 5.
- 20 • "the Court must give Plaintiff a sufficient opportunity to engage new counsel for the litigation
21 can continue [sic]." *Id.*
- 22 • "if the court does not abate discovery proceedings, it will be forcing SIX4THREE to
23 participate in discovery" *Id.* at 6.
- 24 • "all discovery that transpires while Plaintiff is unrepresented will have to be readdressed and
25 relitigated once SIX4THREE retains counsel." *Id.*
- 26 • "SIX4THREE's interests must be represented at [Mr. Kramer's] deposition. SIX4THREE's
27 interests must also be represented in connection with any document production." *Id.*
- 28 • "the scope of the waiver . . . should be limited only to those communications concerning the

specific triggering act – Mr. Kramer’s disclosure of information to the DCMS.” *Id.* at 7.

- “[r]equiring SIX4THREE and counsel to disclose attorney-client communications without first clarifying the [March 15 Order] would in itself constitute ‘annoyance, embarrassment, or oppression’” *Id.*
- “Such unwarranted disclosures of privileged communications would cause irrevocable damage to Plaintiff SIX4THREE.” *Id.*

The Court should reject Birnbaum & Godkin’s games for what they are: a continued attempt to delay the investigation of the violations of the Court’s orders. By moving to withdraw, Birnbaum & Godkin delayed the Court’s ruling on Facebook’s motion to open discovery and to compel by a month. *See Kim Decl. Ex. 5, Pl.’s Ex Parte Appl. for Order Continuing Hr’g Date at 3-4 (Jan. 17, 2019)* (arguing that Facebook’s motion should be continued from February 7, 2019 to after the motion to withdraw is heard). After the Court issued the March 15 Order, Birnbaum & Godkin (and Gross & Klein) refused to comply with the ruling, stating during meet and confers that they would not produce any allegedly privileged documents despite the Court’s explicit finding that privilege had been waived pursuant to the crime-fraud exception. *Kim. Decl. Ex. 6, Def.’s Disc. Letter Br. at 1-3 (May 2, 2019)*. Birnbaum & Godkin then obtained a stay of discovery while the motion to withdraw was pending. *Case Mgmt. Order No. 23 (Apr. 22, 2019)*. Now that Birnbaum & Godkin has finally obtained the relief it sought—withdrawal from representing Six4Three—it is trying to use the Court’s decision to relieve Birnbaum & Godkin to delay the investigation of Birnbaum & Godkin and its ex-client’s misconduct even further. Six4Three is no longer Birnbaum & Godkin’s client. Birnbaum & Godkin cannot request relief on Six4Three’s behalf or argue to protect Six4Three’s interests. It gave up those responsibilities when the Court granted its motion for withdrawal.

B. The Court Should Deny Birnbaum & Godkin’s Request For A Stay.

Birnbaum & Godkin asks the Court to stay discovery until Six4Three retains new counsel. Appl. at 4. The Court should reject this request.

First, Six4Three has had more than five months to retain new counsel, and still has not done so. Six4Three knew it should retain new counsel at least as of November 30, 2018, when Birnbaum & Godkin and Gross & Klein claimed that ethical conflicts prevented them from continuing to represent

1 Six4Three. Kim Decl. Ex. 7, Hr’g Tr. at 19:6-19, 37:9-11 (Nov. 30, 2018). Since then, Six4Three
2 estimated that it would be able to retain new counsel by March 31, 2019. Kim Decl. Ex. 8, Russo letter
3 to Mehta with attached draft Stip. re Hr’g Dates on Pending Potential Mots., Stip. at 1 (Dec. 26, 2018).
4 Then, Six4Three represented that May 31, 2019 would be sufficient time to retain new counsel. Kim
5 Decl. Ex. 9, Decl. of Theodore Kramer ¶ 16 (Jan. 24, 2019). Now, Birnbaum & Godkin wants discovery
6 stayed at least until the case management conference on June 28, 2019. Appl. at 1.

7 A further delay is unjustified and unnecessary. Six4Three has not made any meaningful showing
8 that it is trying to retain new counsel. For example, the one declaration we have from Mr. Kramer shows
9 that some of the firms he claims to have contacted are well-known to represent Facebook, and others
10 claimed to have been conflicted because they were already adverse to Facebook (which is nonsensical).
11 See Kim Decl Ex. 10, Def.’s Suppl. Opp’n to Decl. of Kramer at 1-2 (Jan. 31, 2019). And Six4Three has
12 offered no explanation for why everyone currently or formerly affiliated with Six4Three found one or
13 more lawyers to represent him within a week of the November 30 hearing into Six4Three and its former
14 legal team’s violation of the Court’s orders, while Six4Three claims to need *more than half a year to*
15 *find a lawyer*. Kim Decl. Ex. 11, Def.’s Opp’n to Mots. to be Relieved as Counsel at 13-14 (Jan. 17,
16 2019). “For the uncooperative corporate client who has not been willing to bring in new counsel,
17 granting of the withdrawal motion will put extreme pressure on it to obtain new counsel of record for
18 should it fail to do so it risks forfeiture of its rights through non-representation.” *Thomas G. Ferruzzo,*
19 *Inc. v. Superior Court (C & D Enters., Inc.)*, 104 Cal. App. 3d 501, 504 (1980). The fact that discovery
20 is open should result in Six4Three accelerating its efforts to find new counsel, not in discovery being
21 stayed. And given Six4Three’s apathy toward finding new counsel so far, the stay would likely not be
22 until June 28, but for months longer. This cannot happen. Six4Three and its former legal team violated
23 multiple orders of the Court, and they continue to disrespect the Court’s authority by coming up with
24 scheme after scheme to delay the investigation into their misconduct, all while refusing to abide by this
25 Court’s orders unless and until they are blessed by the Court of Appeal.

26 **Second**, discovery may proceed while Six4Three searches for new counsel. The March 15 Order
27 was unambiguous that privilege was waived pursuant to the crime-fraud exception, and so Six4Three
28 cannot claim privilege over any documents or testimony relating to its and its former legal team’s

1 revealing, discussing, disclosing, or providing of Facebook’s confidential and highly confidential
2 information. March 15 Order at 13. Birnbaum & Godkin argues that Six4Three needs counsel so that it
3 can participate in discovery, namely, the document and deposition subpoenas to Mr. Godkin, Mr. Gross,
4 Mr. Kramer, and Mr. Scaramellino. Appl. at 6. But Six4Three cannot assert privilege over any
5 documents or testimony sought by those subpoenas—indeed, the Court reviewed and approved the
6 specific document requests served by Facebook, *see* March 15 Order at 13—and Birnbaum & Godkin
7 does not identify any specific prejudice that Six4Three would suffer if discovery proceeds. Birnbaum &
8 Godkin claims that if discovery proceeds now, that discovery would have to be “readdressed and
9 relitigated” after Six4Three retains counsel, but Birnbaum & Godkin does not explain what discovery
10 would have to be readdressed and relitigated, or why. Appl. at 6. In any event, this argument is
11 inconsistent with California law and Birnbaum & Godkin does not and cannot cite a single case for the
12 proposition that Six4Three gets a do-over on any discovery that goes forward while it continues to refuse
13 to retain replacement counsel. *See id.*

14 Moreover, discovery can and should proceed as to Mr. Godkin, Mr. Gross, Mr. Scaramellino, Mr.
15 Kramer, and Mr. Dehaye. As explained in Facebook’s May 2, 2019 discovery letter brief, all of those
16 individuals are represented by personal counsel, and there are multiple discovery disputes that are ripe
17 for adjudication by the Court, such as Mr. Godkin and Mr. Gross’s meritless objections to Facebook’s
18 subpoenas; Mr. Scaramellino’s continued evasion of Facebook’s subpoenas; Mr. Dehaye’s ongoing
19 failure to explain to the Court if and how he complied with the Stipulated Protective Order; and the
20 forensic examination protocol for searching the data obtained from Mr. Kramer and Mr. Scaramellino.
21 *See* Kim Decl. Ex. 6, Def.’s Disc. Letter Br. (May 2, 2019).

22 **C. The Court’s March 15 Order Was Clear.**

23 The Court does not need to “clarify” the March 15 Order. The March 15 Order is clear that
24 pursuant to the crime-fraud exception, Six4Three waived the attorney-client privilege regarding the
25 revealing, discussing, disclosing, or providing of Facebook’s confidential and highly confidential
26 information. March 15 Order at 13. Birnbaum & Godkin’s request for “clarification” that the privilege
27 waiver be limited to just Six4Three’s communications “concerning that specific triggering act – Mr.
28 Kramer’s disclosure of information to the DCMS,” Appl. at 7, is not a request for clarification at all. It is

1 a meritless and procedurally improper motion for reconsideration.

2 *First*, Birnbaum & Godkin accuses the Court of vagueness and lack of specificity in its reasoning
3 and review of the evidence in the March 15 Order. Appl. at 6. But contrary to Birnbaum & Godkin's
4 aspersions, the order is not "vague as to the basis for the finding that the crime/fraud exception applies"
5 or "the scope of the communications that are discoverable." *Id.* Birnbaum & Godkin made this very
6 argument in Six4Three's opposition to Facebook's motion to open discovery and compel, and the Court
7 rejected it. *See* Kim Decl. Ex. 12, Pl.'s Opp'n to Mot. to Open Disc. at 3:24-4:3 (Feb. 27, 2019).
8 Notably, Birnbaum & Godkin does not identify a single portion of the March 15 Order that is vague or
9 challenge any of the specific pieces of evidence that the March 15 Order relies on. Appl. at 6-7.
10 Birnbaum & Godkin also claims that there is only "one instance where confidential information was
11 disclosed," *id.*, i.e., Mr. Kramer's disclosure to the DCMS Committee, but does not address the March 15
12 Order's analysis of the multiple examples of Six4Three and its counsel disclosing confidential or highly
13 confidential information to third parties. The reason for these weaknesses in Birnbaum & Godkin's
14 arguments is simple: the March 15 Order reviews the available evidence in detail and explains how the
15 evidence shows that "Six4Three . . . utilized the services of counsel to aid in committing a crime or
16 fraud" and shows multiple disclosures of protected information to third parties. March 15 Order at 7.

17 For example, the March 15 Order identifies multiple pieces of evidence showing that Birnbaum &
18 Godkin "analyze[d] in detail the confidential information obtained from Facebook" and shared it with
19 third parties. March 15 Order at 3. In multiple emails to third parties, "Six4Three's counsel explicitly
20 writes that the summary" that it sent to third parties "is one of evidence and not the allegations." *Id.* at 4
21 (quoting and citing emails by bates number). The Court identified specific emails that "demonstrate that
22 the summary went beyond the four corners of the Fifth Amended Complaint, and included counsel's own
23 impressions and analysis of Facebook's confidential information" *Id.* (same). Indeed, "[t]he
24 summary also summarizes the contents of 'internal emails'" and its conclusion "demonstrates the
25 summary revealed or discussed confidential information obtained from Facebook, and not the allegations
26 of any complaint." *Id.* (same). As another example, the Court identifies multiple written
27 communications involving Six4Three and its counsel, "revealing or discussing confidential information
28 produced by Facebook with third parties and using a retained expert as a source for the news media"

1 *Id.* (same). As yet another example, the Court notes that Six4Three’s counsel “admits it was responsible
2 for the safekeeping of” Facebook’s confidential and highly confidential information. *Id.* at 9. Mr.
3 Godkin stated that the information was stored only on his firm’s secure server and on Relativity, but
4 “[did] not state the security of his firm’s server or document hosting platform ha[d] been compromised.”
5 *Id.* at 10. Nonetheless, Facebook’s confidential and highly confidential information was improperly
6 uploaded to Six4Three’s Dropbox account in violation of the Stipulated Protective Order. *Id.* at 9. The
7 only possible conclusion is that “Birnbaum & Godkin caused Facebook’s confidential and highly
8 confidential information to be uploaded on Six4Three’s Dropbox.” *Id.* at 10. The Court’s March 15
9 Order clearly identifies the basis for the finding of waiver; opens discovery on the revealing, discussing,
10 disclosing, or providing of Facebook’s confidential or highly confidential information; and identifies
11 multiple instances of Six4Three and its former legal team disclosing Facebook’s confidential or highly
12 confidential information to Mr. Kramer and third parties, beyond Mr. Kramer’s disclosure to the DCMS
13 Committee.

14 ***Second***, Birnbaum & Godkin’s request to narrow the scope of the March 15 Order is a baseless
15 motion for reconsideration. A motion for reconsideration is one that asks the Court to “reconsider the
16 matter and modify [or] amend . . . the prior order.” Cal. Civ. Proc. Code § 1008(a). Birnbaum & Godkin
17 asks the Court to reconsider its March 15 Order and narrow the scope of the waiver of privilege. EPA 6-
18 7. This is effectively a motion for reconsideration, even though Birnbaum & Godkin cite California
19 Code of Civil Procedure section 2031.060(b), which governs motions for a protective order in response
20 to a request for document production or inspection. Appl. at 7 (quoting Cal. Civ. Proc. Code §
21 2031.060(b)); *see also id.* § 2031.060(a) (“When an inspection, copying, testing, or sampling of
22 documents, tangible things, places, or electronically stored information has been demanded, the party to
23 whom the demand has been directed, and any other party or affected person, may promptly move for a
24 protective order.”).¹ A motion for reconsideration must be “based upon new or different facts,
25 circumstances, or law” Cal. Civ. Proc. Code § 1008(a). It must be accompanied by an affidavit
26

27 ¹ Even if Birnbaum & Godkin’s ex parte application were a motion for protective order under
28 California Code of Civil Procedure section 2031.060, it would be deficient because Birnbaum &
Godkin’s ex parte application was not “accompanied by a meet and confer declaration under Section
2016.040.” Cal. Civ. Proc. Code § 2031.060(a).

1 stating “what application was made before, when and to what judge, what order or decisions were made,
2 and what new or different facts, circumstances, or law are claimed to be shown.” *Id.* Birnbaum &
3 Godkin does not identify any “new or different facts” or “circumstances” to support its request for
4 reconsideration. It does not identify any facts or circumstances, period. Instead, it calls the order
5 “vague” and claims that there is no evidence of any disclosure of confidential information beyond Mr.
6 Kramer’s disclosure to the DCMS Committee, but does not engage with the multiple pieces of evidence
7 identified in the March 15 Order. Appl. at 6-7; *see supra* at 5-7. Birnbaum & Godkin also does not
8 identify any “new or different . . . law” to support its request for reconsideration—it cites only California
9 Code of Civil Procedure section 2031.060, which governs motions for protective orders and does not
10 apply here, and a case from 1964. Appl. at 7. It also is not accompanied by the statutorily required
11 affidavit. *See* Decl. of Joseph S. Leveroni in Supp. of Birnbaum & Godkin, LLP’s Ex Parte Appl. to Stay
12 Disc. ¶¶ 1-8 (not identifying any new or different facts, circumstances, or law that are claimed to be
13 shown). The Court should deny Birnbaum & Godkin’s request for reconsideration of the March 15
14 Order.

15 **Third**, Birnbaum & Godkin did not give notice of their ex parte application for reconsideration of
16 the March 15 Order. California Rule of Court, Rule 3.1204(a)(1) requires notice of an ex parte to “[s]tate
17 with specificity the nature of the relief to be requested.” In the May 2, 2019 letter brief, Birnbaum &
18 Godkin requested “leave to file an ex parte application to stay discovery until Plaintiff Six4Three LLC
19 engages new counsel.” Kim Decl. Ex. 13, Birnbaum Godkin Disc. Letter Br. at 1 (May 2, 2019). The
20 Court granted leave to file an “ex parte application to stay discovery.” Kim Decl. Ex. 14, Department 23
21 email to counsel (May 2, 2019). Birnbaum & Godkin did not give notice of an ex parte request to
22 reconsider, clarify, or narrow the scope of the March 15 Order’s finding of waiver, and Birnbaum &
23 Godkin did not receive permission to file such an ex parte. This ex parte request should thus be denied as
24 improper.

25 **D. The Court Should Reject Birnbaum & Godkin’s Factual Misrepresentations Of The**
26 **Record.**

27 Finally, Birnbaum & Godkin makes numerous misrepresentations regarding the record in its ex
28 parte application. This is presumably in service of preparing a favorable background for a writ, if the

1 Court denies Birnbaum & Godkin's ex parte application. The Court should reject each of Birnbaum &
2 Godkin's misrepresentations.

3 *First*, Birnbaum & Godkin claims that Six4Three was effectively without counsel since January
4 2019, had "been forced to proceed *in propria persona* since at least January, 2019," and was "effectively
5 without counsel for the hearing on March 15, 2019." Appl. at 4-5. Not so.² At the November 30, 2018
6 hearing, the Court explicitly ordered Six4Three's counsel to "remain in this case" and "not withdraw
7 from representation of plaintiff." Kim Decl. Ex. 7, Hr'g Tr. at 52:19-26 (Nov. 30, 2018). Six4Three's
8 counsel moved to withdraw in January, but the Court did not grant their motions until April 30, 2019.
9 Kim Decl. Ex. 15, Gross & Klein's Mot. to be Relieved as Counsel (Jan. 8, 2019); *id.* Ex. 16, Birnbaum
10 & Godkin's Mot. to be Relieved as Counsel (Jan. 8, 2019); *id.* Ex. 17, Orders Granting Mots. to be
11 Relieved as Counsel (Apr. 30, 2019). Until the Court granted the motions to withdraw, Birnbaum &
12 Godkin and Gross & Klein were Six4Three's counsel and had a duty to continue representing Six4Three.
13 Cal. Rule of Prof. Conduct 1.16, cmt 4. "'Attorneys do *not* have an absolute right to withdraw from
14 representation at any time with or without cause.'" Case Mgmt. Order No. 21 at 3 (Apr. 2, 2019)
15 (quoting Tuft, *Cal. Prac. Guide: Prof. Resp.* ¶ 10:21 (Rutter, Dec. 2018 Update) (original emphasis)).

16 Furthermore, while the motions to withdraw were pending, Birnbaum & Godkin and Gross &
17 Klein "continued to take actions inconsistent with [their] assertion that they are 'legally and ethically
18 barred from advising or representing SIX4THREE . . .'" and inconsistent with Birnbaum & Godkin's
19 new suggestion that it had effectively abandoned its duties to its client between January and April. Case
20 Mgmt. Order No. 21 at 3 (Apr. 2, 2019). Birnbaum & Godkin and Gross & Klein filed an opposition to
21 Facebook's motion to open discovery and to compel on February 27, 2019. Kim Decl. Ex. 12, Opp'n to
22 Mot. to Open Disc. (Feb. 27, 2019). Mr. Godkin of Birnbaum & Godkin attended the March 15, 2019
23 hearing on Facebook's motion to open discovery and to compel telephonically, and Mr. Gross of Gross
24 & Klein attended the hearing in person. Kim Decl. ¶ 19. And "[o]ne day prior to filing [an ex parte
25 application to stay], Six4Three's counsel filed the Civil Case Information Statement on behalf of
26

27 ² If these representations were true, they would amount to a staggering admission that Birnbaum &
28 Godkin and Gross & Klein failed to comply with their ethical obligations (and this Court's orders) that
they continue to represent their client pending the Court's decision on the motions to withdraw.

1 Six4Three in its appeal *Six4Three, LLC v. Facebook, Inc. . . .*” Case Mgmt. Order No. 21 at 3. As the
2 Court observed, “Six4Three’s counsel cannot selectively pursue the matters it chooses to represent
3 Six4Three.” *Id.* at 4. Likewise, Six4Three’s counsel cannot selectively rewrite the history of its
4 representation of Six4Three. Six4Three was represented by counsel until April 30, including at the
5 hearing on March 15, 2019. To the extent that Six4Three believes that Birnbaum & Godkin and Gross &
6 Klein did not effectively represent it starting January 2019, that is a dispute between it and its former
7 counsel, and may be a claim for legal malpractice—but it does not mean Six4Three was unrepresented.

8 **Second**, Six4Three claims that Mr. Kramer’s disclosure of documents to the DCMS Committee
9 was “pursuant to subpoena.” Appl. at 4. But the DCMS Committee did not issue a subpoena or court
10 order to Mr. Kramer. *See* Kim. Decl. Ex. 18, Collins letter to Kramer (Nov. 19, 2018); *id.* Ex. 19 Collins
11 letter to Kramer (Nov. 21, 2018); *id.* Ex. 20, Def.’s Br. re Court’s Order dated Nov. 20, 2018 at 17 (Nov.
12 28, 2018). Moreover, the DCMS Committee is not a court of law, but a select committee of Parliament,
13 and it does not enforce its own orders. *Id.* at 17-18; Kim Decl. Ex. 21, Decl. of Richard Gordon, Queen’s
14 Counsel (“Gordon Decl.”) ¶ 13 (Nov. 28, 2018). To claim that Mr. Kramer’s disclosure of documents
15 was pursuant to a subpoena, or that Mr. Kramer was at risk of legal consequences, was false. Kim Decl.
16 Ex. 20, Def.’s Br. re Court’s Order dated Nov. 20, 2018 at 18-19 (Nov. 28, 2018). It also ignores entirely
17 the multiple other breaches of the protective order, including the fact that Mr. Kramer was provided
18 documents he never should have had in the first place, that Mr. Godkin gave Mr. Scaramellino highly
19 confidential information even though Mr. Scaramellino amended the Stipulated Protective Order
20 certification to strike out references to highly confidential information, that Mr. Kramer violated this
21 Court’s November 20, 2018 order, and that Mr. Kramer and the Six4Three legal team engaged in a
22 months-long effort to publicize Facebook’s confidential and highly confidential information to anyone
23 that would listen (governmental agencies in the United States and abroad, media outlets, non-profits,
24 etc.), as detailed in the Court’s March 15 ruling on the crime-fraud exception. March 15 Order at 2–13.

25 **III. CONCLUSION**

26 For the foregoing reasons, the Court should deny Birnbaum & Godkin’s request to stay discovery
27 into its and its former client’s misconduct, and should also deny Birnbaum & Godkin’s improper request
28 to reconsider the March 15 Order.

1
2 Dated: May 7, 2019

DURIE TANGRI LLP

3
4 By: _____



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PROOF OF SERVICE

I am employed in San Francisco County, State of California, in the office of a member of the bar of this Court, at whose direction the service was made. I am over the age of eighteen years, and not a party to the within action. My business address is 217 Leidesdorff Street, San Francisco, CA 94111.

On May 8, 2019, I served the following documents in the manner described below:

DEFENDANT FACEBOOK, INC.'S OPPOSITION TO BIRNBAUM & GODKIN, LLP'S EX PARTE APPLICATION TO STAY DISCOVERY

☒ (BY MESSENGER SERVICE) by consigning the document(s) to an authorized courier and/or process server for hand delivery on this date.

☒ BY ELECTRONIC SERVICE: By electronically mailing a true and correct copy through Durie Tangri's electronic mail system from cortega@durietangri.com to the email addresses set forth below.

On the following part(ies) in this action:

**VIA MESSENGER SERVICE
AND EMAIL**

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*Agent for Service of Process for
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9 *Attorney for Gross & Klein LLP*

10 I declare under penalty of perjury under the laws of the United States of America that the
11 foregoing is true and correct. Executed on May 8, 2019, at San Francisco, California.

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Christina Ortega